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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RAYMOND SPELLMAN, Plaintiff, v. PEPPERDINE UNIVERSITY, et al., Defendant.	CASE NO. CV 00-09061 NM (MCx) ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Raymond Spellman ("Plaintiff") filed suit against Pepperdine University and its graduate business school, the George L. Graziadio School of Business and Management ("Defendants" or "Pepperdine"), for false advertising, fraud, negligent misrepresentation, breach of contract and breach of the implied covenant of good faith and fair dealing, and unfair competition. After Plaintiff failed to attend two mandatory settlement conferences, the court granted Plaintiff's counsel's motion to withdraw, based upon Plaintiff's representation that he would either file an opposition to the instant motion or retain new counsel by February

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22, 2002.[1] Despite having had an additional two weeks to do so, Plaintiff has filed neither an opposition to the motion nor a substitution of counsel. Nor has Plaintiff requested additional time in which to do so. Accordingly, the court will now decide Defendants' pending motion for summary judgment.

II. FACTS

In 1997, Plaintiff applied for admission to Pepperdine's Masters in Business Administration ("MBA") and Masters in International Business ("MIB") programs. Haven Decl., Ex. 200. Plaintiff was accepted into the MBA program, but was not offered admission to the MIB program because he did not have prior training in a foreign language. Haven Decl., Exs. 207, 232 (Spellman Depo.) at 47. Students in Pepperdine's MIB program must be proficient in a second language, as they spend their second year overseas, taking classes at foreign universities and pursuing internships. Haven Decl., Ex. 206 at 69-71.

At Plaintiff's request and as an exception to its policy, Pepperdine allowed Plaintiff to enroll in the MIB program, even though he had no background in a foreign language. Haven Decl., Ex. 232 (Spellman Depo.) at 48. Plaintiff began studying German, but concedes that he subsequently stopped attending his German classes and was unable to learn the language. Id. at 151, 184. Plaintiff testified that he did not necessarily blame the university, as he was partially responsible for not learning German. Plaintiff admitted: "I just couldn't get it. Just wasn't getting it.... I was spending a considerable amount of time on it, and ... it just wasn't coming to me." Id. at 151-52.

Pepperdine allowed Plaintiff to transfer to the MBA program, where he hoped to spend a semester studying overseas. See id. at 184, 228. Pepperdine's literature clearly stated that students had to apply to the MBA program's semester abroad program. Haven Decl., Ex. 206. Plaintiff concedes the he knew he would have to apply to study overseas at or about the time he transferred to the MBA program. Haven Decl., Ex. 232 (Spellman Depo.) at 215.

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[1] At the hearing, Plaintiff concurred in his counsel's request to withdraw.

Plaintiff applied only to Pepperdine's program in Hong Kong, which could accept only one student. Haven Decl., Exs. 209, 217. Plaintiff was interviewed by the selection committee but was not accepted to the program, as several Pepperdine students applied. Haven Decl., Ex. 226 ¶ 79. Plaintiff pursued no other opportunities to study overseas. Haven Decl., Ex. 232 (Spellman Depo.) at 216. Plaintiff eventually stopped attending classes at Pepperdine on August 1, 1998 and has not paid his tuition for his last trimester. Id. at 228-29, 233. Plaintiff is only two units short of finishing his MBA, which he can complete through home-study in New Jersey, where Plaintiff is employed and earning an annual salary of approximately $75,000. Id. at 232-33, 328; Goodrich Decl. ¶ 4. Plaintiff now alleges that Defendants failed to provide him with an "international experience."

III. LEGAL STANDARD

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Summary judgment is "properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" Celotex Corporation v. Catrett, 477 U.S. 317, 327, 106 S.Ct. 2548, 2555 (1986) (quoting Fed. R. Civ. P. 1). Determinations of credibility, however, should be left to the trier of fact. See Hanon v. Dataproducts Corp., 976 F.2d 497, 507 (9th Cir. 1992). Accordingly, issues that turn on such determinations should not be resolved at the summary judgment stage. See id.; see also Palacios v. City of Oakland, 970 F. Supp. 732, 738 (N.D. Ca. 1997) ("In judging evidence at the summary judgment stage, the Court does not make credibility determinations or weigh conflicting evidence[.]").

In a trio of 1986 cases, the Supreme Court clarified the applicable standards for summary judgment. See Celotex, supra; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505 (1986); Matsushita Electrical Industry Co. v. Zenith Radio Corp., 475 U.S. 574, 106 S.Ct. 1348 (1986). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. See Anderson, 477 U.S. at 256, 106 S.Ct. at 2514. The governing substantive law dictates whether a fact is material; if the fact may affect the outcome, it is material. See id. at 248, 2510. If the moving party seeks summary adjudication with respect to a claim or defense upon which it bears the burden of proof at trial, it must satisfy its burden with affirmative, admissible evidence. By contrast, when the non-moving party bears the burden of proving the claim or defense, the moving party can meet its burden by pointing out the absence of evidence submitted by the non-moving party. The moving party need not disprove the other party's case. See Celotex, 477 U.S. at 325, 106 S.Ct. at 2554.

If the moving party meets its initial burden, the "adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). When assessing whether the non-moving party has raised a genuine issue, the court must believe the evidence and draw all justifiable inferences in the non-movant's favor. Anderson, 477 U.S. at 255, 106 S.Ct. at 2513 (citing Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-59, 90 S.Ct. 1598, 1608-09 (1970)). Nonetheless, "the mere existence of a scintilla of evidence" is insufficient to create a genuine issue of material fact. Id. at 252, 2512. As the Supreme Court explained in Matsushita,

> [w]hen the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.... Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no "genuine issue for trial."

Id., 475 U.S. at 586-87, 106 S.Ct. at 1356 (citations omitted).

To be admissible for purposes of summary judgment, declarations or affidavits must be based on personal knowledge, must set forth "such facts as would be admissible in evidence," and must show that the declarant or affiant is competent to testify concerning the facts at issue. Fed. R. Civ. P. 56(e). Declarations on information and belief are insufficient to establish a factual dispute for purposes of summary judgment. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

IV. ANALYSIS

The gravamen of Plaintiff's complaint is that Defendants did not honor their promises to provide Plaintiff with an "international experience." The undisputed facts do not support such a claim. The record is clear that Plaintiff would have been able to study overseas had he remained in the MIB program and become proficient in a foreign language. It is undisputed that Plaintiff voluntarily transferred to the MBA program after he could not learn German. Plaintiff concedes he was unable to become proficient in German.

Pepperdine's literature clearly stated that students in the MBA program were not guaranteed the opportunity to study overseas, but had to apply to participate in the program. Plaintiff concedes the he knew he would have to apply to study overseas at or about the time he transferred to the MBA program. In short, Pepperdine never guaranteed that Plaintiff would be able to study overseas as part of the MBA program.

Plaintiff alleges in his first amended complaint that Associate Dean James Goodrich promised him that he would be able to study overseas in either China or Hong Kong. However, the record contains no evidentiary support for this allegation. Moreover, Plaintiff applied only to Pepperdine's program in Hong Kong and did not even apply to study in China. See Haven Decl., Exs. 216-17. Although Plaintiff alleges that Pepperdine falsely claimed to have an affiliation with Fudan University in China, he provides no evidentiary support for the allegation, and it is undisputed that Plaintiff could have applied to study at Tsinghau University, also in China. Id. It is also undisputed that Plaintiff could have applied to study in Belgium, France, Germany, Mexico, The Philippines, Spain, Thailand, and The Netherlands. Id. See also Haven Decl., Ex. 226 ¶ 75. Plaintiff's failure to apply to study in China or any other country provides no basis for finding that Pepperdine or its faculty made misrepresentations to Plaintiff or failed to honor their promises, if any, to provide him with an "international experience."[2]

IV. CONCLUSION

Based upon the foregoing, Defendants' motion for summary judgment is **GRANTED**.

IT IS SO ORDERED

DATED: March 8, 2002

Nora M. Manella
United States District Judge

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[2] There is no evidence that Pepperdine misrepresented its students' ages, GMAT scores, and placement rates, as Plaintiff alleges in his first amended complaint.